

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

**JASON MCLEAN and
BRIAN COLEMAN,**

Plaintiffs,

v.

**COMMUNICATIONS CONSTRUCTION
GROUP, LLC, BRAD DODSON,
JONATHAN GATES AND MIKE
FENDER**

Defendants.

CIVIL ACTION NO. 06-617 (JJF)

**JURY TRIAL OF TWELVE
DEMANDED**

**DEFENDANT COMMUNICATIONS CONSTRUCTION GROUP, LLC'S
MOTION FOR PARTIAL DISMISSAL OF THE COMPLAINT**

Defendant Communications Construction Group, LLC ("CCG") hereby moves pursuant to Rule 12(b)(6) of the Federal Rules of Procedure for the partial dismissal of the Complaint filed by Plaintiffs Jason McLean and Brian Coleman in the above-captioned matter. Defendant CCG submits that the Motion should be granted for the following reasons, as described more fully in the accompanying Memorandum of Law:

1. Plaintiffs' Title VII claims should be dismissed as to the Individual Defendants because there is no individual liability under Title VII.
2. Plaintiffs' claim of discrimination in violation of the Equal Protection Clause should be dismissed as to All Defendants because Plaintiffs have failed to allege in their Complaint any state action on the part of Defendants.
3. Plaintiffs' breach of implied covenant of good faith and fair dealing claim should be dismissed as to Defendant CCG because that claim is preempted by the exclusivity provisions of Delaware's employment discrimination statute.

4. Plaintiffs' breach of implied covenant of good faith and fair dealing claim should be dismissed as to the Individual Defendants because they were not a party to Plaintiffs' employment contracts with CCG.

5. Plaintiffs' assault and battery claim should be dismissed as to All Defendants because it is barred by Delaware's Workers' Compensation statute.

WHEREFORE, for the above stated reasons, Defendant CCG respectfully requests that this Court Dismiss Counts III, IV, and V against it. Further, Defendant CCG respectfully requests that this Court dismiss all counts as to the Individual Defendants.

Respectfully submitted,

/s/ Michael P. Kelly

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Dated: October 24, 2006

Attorneys for Defendant
Communications Construction Group, LLC

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ORDER

THIS MATTER having come before the Court by way of Defendant Communications Construction Group, LLC's Motion for Partial Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) and opposition having been filed thereto by Plaintiffs, and the court having considered the moving and non-moving papers and other competent information referenced therein, and for good cause shown,

IT IS on this ____ day of _____ 2006, hereby **ORDERED**, as follows:

1. Plaintiffs' claims brought in Counts III, IV, and V against Defendant Communications Construction Group, LLC are hereby dismissed; and
2. All claims against the Individual Defendants, Brad Dodson, Jonathan Gates, and Mike Fender are hereby dismissed.

BY THE COURT:

U.S.D.J.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion for Partial Dismissal of the Complaint was served upon:

Ronald G. Poliquin
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Attorney for Plaintiffs

this 24th day of October, 2006 via United States mail, postage prepaid.

/s/ Michael P. Kelly

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